



**COMMONWEALTH OF KENTUCKY
UNIFIED PROSECUTORIAL SYSTEM**

**Prosecutors Advisory Council
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Frankfort, Kentucky 40601
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August 31, 2010

Secretary Nikki R. Jackson
Personnel Cabinet
501 High Street
Frankfort, KY 40601

RE: Proposed Furlough Implementation for Unified Prosecutorial System

Dear Secretary Jackson:

Pursuant to your request, enclosed please find the second revised Unified Prosecutorial System's proposed furlough plan for fiscal year 2010-2011 pursuant to the regulatory requirements set forth within 101 KAR 5:015E for your review and approval. Enclosed within these documents are the following:

- The designation of individuals responsible for the oversight and administration of these furloughs with enclosed designation forms;
- The proposed manner of how furloughs will be applied to all employees; (The Unified Prosecutorial System consists entirely of unclassified employees)
- A request for exemption of specific individuals in the classifications provided in 101 KAR 5:015E, if applicable (See below regarding elected officials);
- Any specific flexibility considerations or requests with appropriate justification;
- Certifications that furloughs will be applied in compliance with the requirements established by 101 KAR 5:015E; and
- A copy of the sample notice that each employee will receive at least seven (7) days prior to any period of furlough

If you have any questions regarding this material, the lead contact for the Unified Prosecutorial System's proposed furlough plan is Janet M. Graham, Executive Director, Office of Prosecutors Advisory Council, 700 Capitol Avenue, Suite 118, Frankfort, KY 40601, telephone number 696-5647.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet M. Graham".

Janet M. Graham
Executive Director, Office of Prosecutors Advisory Council
Enclosures

UNIFIED PROSECUTORIAL SYSTEM FURLOUGH PLAN

I. DESIGNATION OF APPOINTING AUTHORITIES

Pursuant to the authority provided in 101 KAR 5:015E and 2010 Extra. Sess. Ky. Acts ch. 1, Part IV, 11, the Unified Prosecutorial System has deemed it appropriate to designate additional individuals to be responsible for the oversight and implementation of the proposed furlough plan. These individuals will be responsible for ensuring that notice will be provided to employees, may accept and review any requests for voluntary furlough or any waivers of formal notices, and have the authority to process payroll actions due to the furloughs. No other individuals other than those designated in writing have the authority to take such actions related to furloughs. Additionally, these designated individuals will ensure that furlough time is appropriately monitored and taken by Unified Prosecutorial System employees.

| <u>Name of designated employee(s)</u> | <u>Official Title</u> | <u>Specific Org Units For Which Have Authority</u> |
|---------------------------------------|--------------------------|--|
| Janet M. Graham | Executive Director | Unified Prosecutorial System |
| Gina Carey | Executive Advisor | Unified Prosecutorial System |
| Jennifer Black Hans | Branch Manager | Unified Prosecutorial System |
| Debbie Sutherland | Human Res. Administrator | Unified Prosecutorial System |

The written designation(s) is/are enclosed with this proposed plan and will be maintained with the Personnel Cabinet. If necessary, additions or changes may be made to these designations, and these changes will only be made to the designations on file with the Personnel Cabinet rather than require an entire change to this proposed plan.

II. APPLICATION OF FURLOUGH DATES

Three (3) Mandated Shut-down Days September 3, 2010; November 12, 2010; May 27, 2011

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Part 1:

The Unified Prosecutorial System consists of 120 elected County Attorneys and 57 elected Commonwealth's Attorneys and their employees. Thus, it consists of both elected and nonelected employees. Therefore, portions of this system will not result in a complete shut-down of its operations on the mandatory days due to provisions in the Kentucky Constitution. Under the Kentucky Constitution, the elected officials cannot be furloughed.

In addition to the Constitutional provisions below, the Unified Prosecutorial System has requested exceptions regarding the three mandatory furlough dates and the discretionary furlough dates. The reasons for this request are myriad. First, prosecutors are responsible for ensuring that criminal defendants are afforded the right to a speedy trial, and there are arguably time limits with respect to when a defendant must be tried in a criminal matter. Additionally, there are time frames regarding how long a person can be detained after arrest before he must be brought before a judge for arraignment. These are just examples of some of the rights that are implicated when prosecutors must be furloughed. Many of these matters involve ethical duties on the part of the prosecutor to ensure that these constitutional rights are protected. Therefore, on September 3, November 12 and May 27, the Unified Prosecutorial System respectfully requests the flexibility to work as needed per court case requirements and constitutional requirements. Should employees be called in to work on a furlough day, they will be permitted to be furloughed on an alternate day.

Additionally with respect to both County and Commonwealth's Attorneys, crime will still occur on furlough days, and someone will have to be there to deal with it. For example, if a domestic violence victim calls the County Attorney seeking an EPO or if there is a report that a child is being abused, the County Attorney or Assistant County Attorney is going to deal with these matters whether or not they occur on a furlough day. There are many other examples that I could give, but this gives you a sense of the urgency of these matters. Although the elected officials will not be furloughed, there may be times when an employee will have to deal with these matters while the elected official takes care of another constitutionally mandated duty. Therefore, on September 3, November 12 and May 27, the Unified Prosecutorial System respectfully requests the flexibility to work as needed per court case requirements and constitutional requirements. Should employees be called in to work on a furlough day, they will be permitted to be furloughed on an alternate day.

Additionally, as previously noted, the Unified Prosecutorial System consists of 120 elected County Attorneys and their employees and 57 elected Commonwealth's Attorneys and their employees, who handle district and circuit courts in 120 counties and 57 judicial circuits. As you can

imagine, the judges in these counties/judicial circuits hold their criminal court on a variety of days. These local judges are independently elected officials, and they have independent authority to decide when they want to hold their criminal court. The Chief Justice has very kindly offered to help mediate these types of issues, but there may very well be cases where it is necessary to hold criminal court on these furlough days and have the prosecutors and public defenders take their furlough day during another day of that pay period. If a judge tells a prosecutor that they need to be in court on September 3, they will have no alternative but to appear in court or to risk contempt charges and ethical complaints. Therefore, on September 3, November 12 and May 27, the Unified Prosecutorial System respectfully requests the flexibility to work as needed per court case requirements and constitutional requirements. Should employees be called in to work on a furlough day, they will be permitted to be furloughed on an alternate day.

Attached are copies of the following documents: a memorandum from the Prosecutors Advisory Council which was voted upon at an open meeting and describes the way in which furloughs will be administered; A cover letter has been sent to all elected officials with copies of the furlough notice letter that must be distributed to their employees; and the certification by the elected official that notice of the furlough has been given to all of the employees.

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Three (3) Non-Designated Months
First Pay Periods in October 2010, March 2011, and April 2011

Part 2: Employees will be furloughed during the non designated months during the first pay period of each month. The elected prosecutors will work with their staff to determine appropriate furlough dates so that court dates and criminal justice operations can continue. Employees will receive a seven day furlough notice prior to these furlough dates.

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III. CONTRACT WORKERS

The Unified Prosecutorial System does not have contract workers reportable pursuant to HB 387.

IV. REQUIRED CERTIFICATIONS

Please certify, by initial of Cabinet or Independent Agency head, that the statements are true:

We will not involuntarily furlough any employee more than twenty-four (24) work hours in a six (6) month calendar period, as provided in this subsection:

- Employees regularly assigned to a 40-hour work schedule shall be involuntarily furloughed no more than three (3) work days or twenty-four (24) work hours;
- Employees regularly assigned to a 37.5-hour work schedule shall be involuntarily furloughed no more than three (3) work days or twenty-two and one-half (22.5) work hours, which is the equivalent reduction of hours and corresponding pay; and

- All remaining employees on different work schedules shall be involuntarily furloughed in a manner to achieve an equivalent reduction of hours and corresponding pay, which shall be set forth in the furlough plan provided by the Cabinet Secretary or Independent Agency head and approved by the Secretary of Personnel.


(INITIALS)

We will not involuntarily furlough any employee more than 20 percent of an employee's scheduled work hours in any one work week.


(INITIALS)

Employees will not be permitted to utilize accrued leave balances in lieu of a temporary reduction of hours without pay.


(INITIALS)

During the period of furlough, no contractor will receive either additional duties typically performed by a furloughed employee or work additional hours due to the furlough of a state employee.


(INITIALS)